Supreme Court of the United States

OCTOBER TERM, 1919.

No. 391.

J. M. THOMPSON, Master and Claimant of the Steamship "Westmeath," her engines, etc.,
Claimant-Petitioner,
against

PETER LUCAS and GUSTAVE BLIXT,
Libelants-Respondents.

BRIEF FOR PETITIONER.

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BRIEF FOR THE CLAIMANT-PETITIONER.

Statement.

This case comes here on a Writ of Certiorari to review a decree of the United States Circuit Court of Appeals for the Second Circuit made on the 26th day of April, 1919, which affirmed the decree of Judge Chatfield in the District Court of the United States for the Eastern District of New York whereby it was adjudged that the libellants recover of the claimant certain sums as wages. *Record*, 49, 50, 54.

The libel was brought by Peter Lucas and Gustav Blixt, firemen on the British Steamship *Westmeath*, to recover wages which it is alleged became due because of the refusal of the master to

pay the libelants one-half of the wages due them after demands made upon the master of the Westmeath at New York, pursuant to Section 4530 of the Revised Statutes of the United States, which is a part of the so-called Seamen's Act. *Record,* 2, 3.

The claimant answered, pleading that the libelants were not entitled to any wages under the articles, i. e. the contract, and that the libelants had forfeited all claim to wages by their desertion. It was also pleaded that the United States Statutes were not applicable, but that the laws of Great Britain governed. *Record,* 4, 5.

The facts, which are either admitted or found by both the Courts below are as follows:

In December, 1915, before Section 4530 became by its terms effective as to foreign vessels, the libelants, both foreigners, shipped as members of the crew of the British Steamship *Westmeath* at ports in Australia and bound themselves to serve for a voyage not exceeding one year's duration to any ports or places within certain specified limits and to end at any such port in the United Kingdom or the Continent of Europe, within home trade limits as might be required by the master.

After proceeding to Boston and Baltimore where the libelants asked for their discharge, agreeing to take less than the full amount of their wages, the vessel proceeded to New York where Lucas on April 10, 1916, and Blixt on April 8, 1916, made demands for half wages under Section 4530 of the Revised Statutes.

These demands were refused by the master and thereupon this libel was filed on April 14, 1916, by these libelants to recover the full wages earned by them.

The District Court, finding the facts in favor of the libelants and construing the Seamens Act as applicable to the case, entered a decree for the libelants.

The Circuit Court of Appeals for the Second Circuit, in affirming the decree of the District Court, did not discuss or make any mention of the claimant's contention that the Seamen's Act should not be construed to apply to a contract between foreign seamen on a foreign vessel made and to be performed outside the territory of the United States.

The Court in an opinion reported, 258 Fed., 446, held the Act constitutional, under the authority of *Patterson* vs. *The Eudora,* 190 U. S., 169, and also considered the Act within the power of Congress as a regulation of commerce.

STATUTE INVOLVED.

Section 4530 of the Revised Statutes, as amended, Act. Dec. 21, 1898, C. 28, Sec. 5 and Act March 4, 1915, C. 153, sec. 4, is part of the so-called Seamen's Act. It reads as follows:

> "Sec. 4530. Every Seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contray shall be void: Provided, Such a demand shall not be made before the expiration of, nor oftener than once in five

days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: Provided Further, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: And Provided Further. That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

FIRST POINT.

SECTION 4530 OF THE SEAMEN'S ACT SHOULD NOT BE CONSTRUED TO APPLY TO FOREIGN SEAMEN SHIPPING ON A FOREIGN VESSEL UNDER AN AGREEMENT NOT TO BE PERFORMED WITHIN THE UNITED STATES AND THEREBY BE HELD TO ABROGATE A CONTRACT VALID WHERE MADE.

A. *This Section is ambiguous and is not expressly applicable to foreign seamen on a foreign vessel.*

The ambiguous provision of the Section is as follows:

> "This Section shall apply to seamen on foreign vessels while in the Harbors of the United States."

From the language of this provision it is not at all clear whether Congress intended that Section merely to apply,

(1) to American seamen shipping on foreign vessels,

(2) to contracts entered into within the United States,

(3) to that part of the wages earned in the harbors of the United States or, as the Court below apparently found,

(4) to foreign seamen on a foreign vessel temporarily within the harbors of the United States.

The title or preamble of the Seamen's Act is as follows:

> "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Neither in the Act nor in its title does the Act expressly apply to foreign seamen shipped on a foreign vessel in a foreign port. It is quite evident it was not the intention of Congress to pass an act for the welfare of *foreign* seamen, but for the welfare of *American* seamen alone.

It is well settled that the title of a statute may be considered as tending to throw light upon the

Legislature's intention as to its scope and operation. *Holy Trinity Church* vs. *United States*, 143 U. S., 457, 462; *United States* vs. *Fisher*, 2 Cranch, 358, 386; *Coosaw Min. Co.* vs. *South Carolina*, 144 U. S., 550, 563; *Knowlton* vs. *Moore*, 178 U. S., 41, 65.

In *United States* vs. *Palmer*, 3 Wheat., 610, Chief Justice Marshall said, at page 631:

> "The words of the Section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the Legislature intended to apply them.
>
> The title of an Act cannot control its words, but may furnish some aid in showing what was in the mind of the Legislature."

It is a well recognized rule of construing statutes that where the statute's meaning, as in this case, is doubtful or where as would be the result in this case adhering to the strict letter would lead to injustice or contradictory provisions, the duty devolves opon the court to ascertain the true meaning. If the intention of the Legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction consistent with the general principles of law and comity.
To the same effect is:

> *Chinese Laborers*, In re *Ah Tie and others*, 13 Fed., 291.

It is a well recognized rule of construction in so far as practicable, to reconcile different provisions so as to make them consistent and harmonious. *Morris* vs. *Railroad,* 37 New Jersey Law, 229; *Manuel* vs. *Manuel,* 13 Ohio State, 458; *Ogden* vs. *Strong,* 2 Paine, 584.

As this Statute is in derogation of the common law it should be construed strictly. *Sanberg* vs. *McDonald,* 248 U. S., 185; *Northern Securities Co.* vs. *U. S.,* 193 U. S., 361; *Cope* vs. *Cope,* 137 U. S., 682, 685; *Fourth National Bank* vs. *Francklyn,* 120 U. S., 747, 753; *Shaw* vs. *Railroad Company,* 101 U. S., 557, 565; *Meister* vs. *Moorse,* 96 U. S., 76, 79; *Ransom* vs. *Williams,* 2 Wall., 313, 318.

In *Shaw* vs. *Railroad* (supra), the Court said, at page 565:

> "No statute is to be construed as altering the common law farther than its words import. It is not to be construed as making any innovation upon the common law which it does not 'fairly express.'"

This court in the case of *The Talus,* 248 U. S., 185 and *The Windrush,* 248 U. S., 205, and *The Rhine,* 248 U. S., 205, recently held that this statute was penal and for that reason should be construed trictly.

If Congress had intended that this section should apply to foreign seamen on foreign vessels, temporarily within a harbor of this country in derogation of contracts made on foreign soil, and in contravention of the long established rules of comity and the law of nations it would expressly have provided in the act that it should be so applicable.

This section, and all the sections of the act, deal with *American* seamen and make provisions for their benefit and safety.

As was said in *The Talus* case at page 195.

> "Had Congress intended to make void such contracts and payments, a few words would have stated that intention not leaving such an important regulation to be gathered from implication."

B. *The Seamen's Act should not be so construed as to impute to Congress an intention to legislate in violation of international law and comity.*

1. It is a general rule of law, well recognized in this country as well as in most other civilized countries, that a contract valid where made is valid everywhere, and should be enforced unless against public policy, natural justice or morality.

In *Story on Conflict of Laws,* Eighth Edition, Section 242, it is said [Italics ours]:

> "Generaly speaking, the validity of a contract is to be decided by the law of the place where it is made, unless it is to be performed in another country; for, as we shall presently see, in the latter case, the law of the place of performance is to govern. If valid there, it is by the general law of nations, jure gentium, held valid everywhere, by the tacit or implied consent of the parties. The rule is founded, not merely in the convenience, but in the necessities of nations; for otherwise it would be impracticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of pur-

> chases and sales of mutual credits and of transfers of negotiable instruments, rests on this foundation; *and the nation which should refuse to acknowledge the common principles would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes.*"

This doctrine has almost universal support. It is well recognized by foreign jurists and writers as well as by our own writers and Judges. *Molin, Comment, ad Consuet. Paris,* tit 1, s. 12, *Bouhier,* c. 21, s. 190, 2 *Boullenios, obs.* 46, p. 458, 2 *Kent Com.,* 457 et seq. *Scudder* vs. *Union National Bank,* 91 U. S., 406; *Northern Pacific R. R.* vs. *Babcock,* 154 U. S., 190, *The Antelope,* 10 Wheat., 66; *Texas & Pacific R. R.* vs. *Cox,* 145 U. S. 593, *Smith* vs. *Condry,* 1 How., 28, *The China,* 7 Wall., 53, 64; *Dennick* vs. *R. R. Co.,* 103 U. S., 11, *The Scotland,* 105 U. S., 24, 29; *Huntington* vs. *Attrill,* 146 U. S., 657; *Wilson* vs. *McNamee,* 102 U. S., 572; *P. & O. S. N. Co.* vs. *Shand,* 3 Moore P. C. N. S., 290; *Westlake's Private International Law;* p. 301.

In *Northern Pacific R. R.* vs. *Babcock,* Mr. Chief Justice White, quoting from the case of *Herrick* vs. *Minneapolis & St. Louis R. R. Co.,* 31 Minnesota, 11, said at page 198, as follows:

> "'But it by no means follows, that because a statute of one State differs from the law of another State, therefore it would be held to be contrary to the policy of the laws of the latter State.' Every day our courts are enforcing rights under foreign contract where the lex

> loci contractus and lex fori are altogether different, and yet we construe these contracts and enforce rights under them according to their force and effect under the laws of the State where made. To justify a court in refusing to enforce a right of action which accrued under the law of another State, because against the policy of our laws, it must appear that it is against good morals or natural justice, or that, for some other such reason, the enforcement of it would be prejudicial to the general interests of our own citizens."

When once the rights and obligations of a particular transaction are fixed, in accordance with the principles of law and policy of the place where they become fixed, it cannot be admitted that these rights and obligations are subject to being varied according to the place or country or time of their enforcement.

This fundamental principle is attributed to Cicero by Mr. Justice Swayne in the opinion of this Court in the case of *Wilson* vs. *McNamee*, 102 U. S., 572, 574. The enforcement by one sovereign of rights accrued under a valid contract made in the jurisdiction of another sovereign is part of the comity and law of nations.

The law of nations is a part of the law of the land and should be followed by the courts of the United States. *The Amelia*, 1 Cranch., 1; *The Charming Betsey*, 2 Cranch., 64, 118; *Holmes* vs. *Jennison*, 14 Pet., 540, 569.

The contract involved herein, whereby it was provided that no wages were due the libelants un-

til the completion of the voyage, is not contrary to public policy, good morals, or natural justice. Such a contract is valid under the laws of this country as well as those of Great Britain.

This contract is not contrary to public policy simply because it is in conflict with the provisions of Section 4530 of the Revised Statutes.

> *Northern Pacific R. R.* vs. *Babcock,* 154 U. S., 190.

In the case of *Sandberg* vs. *McDonald,* 248 U. S., 185, this Court, considering the application of the present Seamen's Act to advances made to foreign seamen on foreign vessels, said at page 196:

> "It is said that the advances in foreign ports are against the policy of the United States and, therefore, not to be sanctioned here. As we have construed this section of the statute, no such policy as to foreign contracts legal where made, is declared."

That class of cases represented by *the Kensington,* 183 U. S., 263, and *Union Trust Co.* vs. *Grosman,* 245 U. S., 412, on which the decision of the Circuit Court of Appeals in *The Strathearn,* 239 Fed., 583, was based are not applicable to the situation presented here. Those cases simply affirm the well recognized principle that the courts of this country will not affirmatively enforce a remedy under a foreign contract, when against public policy here.

In the case of *Cuba R. R. Co.* vs. *Crosby,* 222 U. S., 473, Mr. Justice Holmes said at page 478:

> "The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there. With very rare exceptions the liabilities of parties to each other are fixed by the law of the territorial jurisdiction within which the wrong is done and the parties are at the time of doing it. *American Banana Co.* vs. *United Fruit Co.*, 213 U. S., 347, 356. *See Bean* vs. *Morris*, 221 U. S., 485, 486, 487. That and that alone is the foundation of their rights."

The Seamens Act in so far as it is sought to be invoked in this case, does not place any limitation on the enforcement of an obligation but creates a pecuniary right and obligation in contravention of the terms of a valid foreign contract.

2. The Seamens Act should be so construed as not to give it extra-territorial force or application.

a. It has always been recognized by the courts as well as the executive branch of the Government of this country that the laws and statutes of any State should not be given extra-territorial force and effect. *American Banana Co.* vs. *United Fruit Co.*, 213 U. S., 347, 356; *Northern Pacific R. R.* vs. *Babcock*, 154 U. S., 190; *Crapo* vs. *Kelly*, 16 Wall., 610, 624; *Bank of Augusta* vs. *Earle*, 13 Pet., 519; *Huntington* vs. *Attrell*, 146 U. S., 657, 670; *Cuba R. R.* vs. *Crosby*, 222 U. S., 473; *The Belgenland*, 114 U. S., 355, 370; *La Bourgogne*, 210 U. S., 95, 115; *The Kestor*, 110 Fed., 432, at 494; *The Lamington*, 87 Fed., 752; *Rundell* vs. *Comp. Gen. Transatlantique*, 100 Fed., 655, 660; *United States* vs. *Palmer*, 3 Wheat., 610,

631, 634, 643; *United States* vs. *Klintock*, 5 Wheat., 144; *The Apollon*, 9 Wheat., 362. *The Hamilton*, 207 U. S., 398, 405; *The Scotia*, 14 Wall., 170, 184; *Marshall* vs. *Murgatroyd*, L. R. (1870), 6 Q. B., 31; *The Titanic*, 233 U. S., 718, 732.

The English rule is laid down in *Lloyd* vs. *Guibert*, *L. R.*, 1 Q. B., 115, 127; The French rule can be found in *The Dio Adelphi*, Nov., 1879, 91 Jour, du Palais, 1880, pages 603, 609

In *The Appollon*, Mr. Justice Story said at page 370:

> "The laws of no nation can justly extend beyond its own territory, except as far as regards its own citizens."

In the case of the *American Banana Co.* vs. *United Fruit Co.*, 213 U. S., 347, Mr. Justice Holmes said at page 357:

> "The foregoing considerations would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power. 'All legislation is *prima facie* territorial.' *Ex parte Blain, In re Sawers*, 12 Ch. Div., 522, 528; *States* vs. *Carter*, 27 N. J. (3 Dutcher), 499; *People* vs. *Merrill*, 2 Parker Crim. Rep., 590, 596. Words having universal scope, such as 'Every contract in restraint of trade,' 'Every person who shall monopolize,' etc., will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch."

In *United States* vs. *Palmer,* 3 Wheat., 610, which involved the construction of a Piracy Act, the Circuit Court of Massachusetts certified amongst others the following question to this Court:

> "3. Whether the crime of robbery committed by persons who are not citizens of the United States on the high seas on board of any ship or vessel belonging exclusively and subject to any foreign state or sovereignty or upon the person of any subject of any foreign state or sovereignty not on board of any ship or vessel belonging to any citizen or citizens of the United States, be a robbery or piracy within the true intent and meaning of the said Eighth Section of the Act of Congress aforesaid."

This Court held that the crime of robbery committed by a person on the high seas on board of any ship or vessel belonging exclusively to subjects of a foreign state is not piracy within the true intent and meaning of the Act and is not punishable in the courts of the United States.

Mr. Chief Justice Marshall said, at page 631:

> "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the Legislature intended to apply them. * * *
>
> The 8th section also commences with the words 'any person or persons.' But these

words must be limited in some degree, and the intent of the Legislature will determine the extent of this limitation. For this intent, we must examine the law. The succeeding member of the sentence commences with the words: 'If any captain or mariner of any ship or other vessel, shall piratically run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield up such ship or vessel volutarily to any pirate.'

"The words 'any captain, or mariner of any ship or other vessel,' comprehend all captains and mariners, as entirely as the words 'any person or persons,' comprehend the whole human race. Yet it would be difficult to believe that the Legislature intended to punish the captain or mariner of a foreign ship, who should run away with such ship, and dispose of her in a foreign port, or who should steal any goods from such ship to the value of fifty dollars, or who should deliver her up to a pirate when he might have defended her, or even according to previous arrangement. The third member of the sentence also begins with the general words 'any seaman.' But it cannot be supposed that the Legislature intended to punish a seaman on board a ship sailing under a foreign flag, under the jurisdiction of a foreign government, who should lay violent hands upon his commander, or make a revolt in the ship. These are offences against the nation under whose flag the vessel sails, and within whose particular jurisdiction all on board the vessel are. Every nation provides for such offences the punishment its own policy may dictate; and no general words of a statute ought to be construed to embrace them

when committed by foreigners against a foreign government."

This Court in the cases that have come before it has construed the act under consideration as not having any extra-territorial force. *Sanberg* vs. *McDonald, The Talus,* 248 U. S., 185; *The Rhine* and *The Windrush,* 248 U. S., 205.

In the *Talus* this Court held that §11 of the Seamen's Act which forbids the advance payment of any wages to seamen under certain penalties did not apply to advances made to foreign seamen in a foreign port, and limited the operation of the statute to advances made within this country. In the *Rhine* and *Windrush* cases it held that section did not apply to advances made even on American vessels outside of the United States.

Section 11 of the Seamen's Act under discussion in those cases provides in part as follows:

> "This section shall apply as well to foreign vessel while in the waters of the United States as to vessels of the United States."

The wording of this provision is substantially the same as the analogous provision of §4530.

In *The Talus,* Mr. Justice Day, delivering the opinion of the Court, said at page 195 [Italics ours]:

> "While the Seamen's Act of 1915 contains many provisions for the amelioration of conditions as to employment and care of seamen, in the aspect now involved we have called attention to the state of legislation and judicial

decision when that act was passed. *Did Congress intend to make invalid the contracts of foreign seamen so far as advance payment of wages is concerned, when the contract and payment were made in a foreign country where the law sanctioned such contract and payment? Conceding for the present purpose that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and payments a few words would have stated that intention, not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States.* The statute makes the payment of advance wages unlawful and affixes penalties for its violation, and provides that such advancements shall in no cases, except as in the act provided, absolve the master from full payment after the wages are earned, and shall be no defense to a libel or suit for wages. How far was this intended to apply to foreign vessels? We find the answer if we look to the language of the act itself. It reads that this section shall apply to foreign vessels while in waters of the United States.' "

"Legislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction. *American Banana Co.* vs. *United Fruit Co.*, 213 U. S., 347, 357. In

Patterson vs. *Bark Eudora,* supra, this court declared such legislation as to foreign vessels in United States ports to be constitutional. We think that there is nothing in this section to show that Congress intended to take over the control of such contracts and payments as to foreign vessels except while they were in our ports. Congress could not prevent the making of such contracts in other jurisdictions. If they saw fit to do so, foreign countries would continue to permit such contracts and advance payments no matter what our declared law or policy in regard to them might be as to vessels coming to our ports.

"In the same section, which thus applies the law to foreign vessels while in waters of the United States, it is provided that the master, owner, consignee, or agent of any such vessel, who violates the provision of the act, shall be liable to the same penalty as would be persons of like character in respect to a vessel of the United States. This provision seems to us of great importance as evidencing the legislative intent to deal civilly and criminally with matters in our own jurisdiction. Congress certainly did not intend to punish criminally acts done within a foreign jurisdiction; a purpose so wholly futile is not to be attributed to Congess. *United States* vs. *Freeman,* 239 U. S., 117, 120. The criminal provision strengthens the presumption that Congress intended to deal only with acts committed within the jurisdiction of the United States."

To the same effect are:

The Italier, 257 Fed., 712;
The Nigretia, 255 Fed., 56;
The Belgier, 246 Fed., 966;
The State of Maine, 22 Fed., 734.

In an opinion dated August 25, 1915, Mr. Gregory, then Attorney General, ruled that Section 14, of the Act which provides in part as follows: "* * * Provided that foreign vessels leaving Ports of the United States shall comply with the rules herein prescribed, as to life-saving appliances, their equipment and the manning of the same," does not apply to foreign steamers not carrying passengers to or from the United States or the foreign steamers carrying passengers to the United States.

In the case of *The State of Maine* (*supra*), Judge Addison Brown held that the Seamen's Act of 1872, known as the Dingley Act, did not prohibit advances made to seamen in foreign ports. He said at page 735:

> "Statutes have no extra-territorial force. The shipment of seamen in a foreign port, and the payment either of advance wages or of bills previously incurred, as in this case, as an advance of wages, are acts done and completed wholly upon foreign soil; and therefore wholly beyond the jurisdiction of this country. If American vessels be treated as a part of the territory of the United States, and within its jurisdiction, though in foreign ports, still, acts like the present, that are not done up ship-

board, but, as I have said, are completed upon and prior to the seamen's coming aboard, and as a means of procuring them to do so, would not be done within the territorial jurisdiction of this country. Every presumption is against the supposition that Congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction. And while Congress might perhaps subject the masters of American vessels upon their return to this country to punishment for acts done upon foreign soil, though such acts were lawful there, still, an intention would not be presumed. Nor is such an intention sufficiently indicated by mere general language that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States. The intention to include acts done on foreign territory would only be inferred from some previous provisions showing an indisputable intention to make the statute applicable to acts committed beyond our territorial jurisdiction. The provisions of this Statute are not of that specific character."

Patterson vs. *The Bark Eudora,* 190 U. S., 169, is not an authority to the contrary. In that case the seamen shipped at New York, and it does not appear that they were not American citizens. The contract was made within the territorial jurisdiction of the United States, and it is not doubted that this Government may lawfully regulate such contracts, but the United States has no power to regulate contracts lawfully made by foreigners in their own country, and the Court in

the *Eudora* case did not so hold. The Court held that Congress intended "to protect all sailors shipping in our ports." Mr. Justice Brewer said at page 176:

> "It may be remarked in passing that it does not appear that the contract of shipment or the advanced payments were made on board the vessel. On the contrary, the stipulated fact is that the 'seamen were engaged in the presence of the British Vice-Consul at the port of New York.' The wrongful acts were, therefore, done on the territory and within the jurisdiction of the United States."

The provisions of Section 4530 may well apply and would have ample operation when confined to contracts of seamen on foreign vessels when such contracts are made while the vessel is in the harbors of the United States, and then only to contracts of American seamen.

This construction seems to have been placed on the statute by Judge Neterer in the case of *Clyma* vs. *The Ixion,* 237 Fed., 142. In that case it was held on exceptions in an action brought by a British seaman against a British vessel for wages under this section, that the section was only applicable to wages earned in an American port. This interpretation of the Act is in harmony with the well known principles of the construction of statutes which confine their operation to the territorial limits of the sovereign which enacted them.

In *The Italier,* 257 Fed., 712, the Circuit Court of Appeals for the Second Circuit held that the five-day period described by this section of the Statute only begins to run on the arrival of a

foreign vesel in an American port which, in fact, limits the operation of the Statute to wages actually earned in this country.

b. Where a controversy concerning the rights and duties of the crew to the ship or among themselves and not involving a breach of the peace on a foreign vessel on the high seas, or in the port of another country, the law of the flag of the vessel governs the rights and liabilities of the parties just as conclusively as though the controversy had arisen on land within the territorial jurisdiction of the country whose flag the vessel flies, for a ship has long been regarded by the courts and by writers on international law as a floating island of the country to which she belongs. *Wildenhus,* 120 U. S., 1; *Liverpool Co.* vs. *Phoenix,* 129 U. S., 397; *The Belgenland,* 114 U. S., 355, 369, 370; *The Scotland,* 105 U. S., 24, 29; *In re Ross,* 140 U. S., 452; *Patterson* vs. *Bark Eudora,* 190 U. S., 169, 176; *Wilson* vs. *McNamee,* 102 U. S., 572; 574; *The Hamilton,* 207 U. S., 398; *Dicey, Conflict of Laws,* 2nd Ed., §663; *Wharton, Conflict of Laws,* §473; *Minor, Conflict of Laws,* §195.

Statements of this doctrine by foreign jurists and text writers are frequent: *Bluntschli,* §317; 1 *Calvo Droit International* (4th Ed.), 552; Book VI, Sec. 3; *Rutherford,* II, c. 9.

In the case of *The Wildenhus,* 120 U. S., 1, the Supreme Court considered the question whether the local authorities had jurisdiction over a crime committed on a Belgian merchant vessel in a port of the United States. Mr. Justice Waite in discussing this subject, said at page 12:

"From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquility of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority. Such being the general public law on this subject, treaties and conventions have been entered into by nations having commercial intercourse, the purpose of which were to settle and define the rights and duties of the contracting parties with respect to each other in these particulars, and thus prevent the inconvenience that might arise from attempts to exercise conflicting jurisdictions."

In *Wilson* vs. *McNamee*, 102 U. S., 572, 574, the laws of New York were deemed to follow a New

York pilot boat beyond the territorial waters of New York with reference to the rights of the pilot's employment.

In *The Hamilton,* 207 U. S., 398, the death Statute of Delaware was applied to loss of life in a collision on the high seas between two vessels owned by corporations of that State.

This rule of international law and comity has been adhered to by the executive branch of this Government. *Moore, International Law Digest,* Vol. 2, §§204, 207.

Regarding the enforcement of the Canadian Shipping Act of 1870 and its enforcement as affects American vessels, Mr. Bayard, Secretary of State, wrote to Mr. White, Charge d'Affairs at London, on March 1, 1889, For. Rel. 1889, 447, as follows:

> "By Section 126 of the Canadian Seaman's Act of 1876 the requirement of shipment of crews before a Canadian shipping master is extended to the shipping of seamen on foreign vessels; but there is a saving clause in favor of vessels belonging to countries between which and Great Britain there is a treaty to prevent such extension. * * *
>
> "Being so instructed the consul (American) on a recent occasion shipped seamen on an American vessel at his consulate in accordance with the laws of the United States; objection was made by the Canadian shipping master, who claimed the sole right to ship the seamen under Canadian articles, whereupon the consul informed him of the instructions he had received from this department to abstain

in future from authenticating such articles.

"This announcement called forth the letter from the shipping master to the consul of the 21st ultimo, inclosed in the latter's dispatch of the 22d the same month, in which the shipping master informs the consul that if hereafter seamen required for American vessels are not shipped in the former's office he shall be obliged to take such legal steps as will enforce compliance with the Canadian act as applied at the port of St. John.

"Under these circumstances, and as the subject is one of wide-spreading importance, I deem it expedient to bring the matter to the attention of Her Britannic Majesty's Government with a view to secure corrective action in the premises without waiting for a case of controversy to arise.

"It is believed to be an accepted doctrine that the right of a vessel to be governed in respect of her internal discipline by the laws and regulations of her own country is not forfeited by her entrance into the port of a foreign country. The position of the Canadian Government in regard to the shipment of seamen at St. John would not only deprive a vessel of that right while in that port, but would by necessary consequence destroy the right until she had shipped another crew in another port, under the laws and regulations of her own country, for which in the meantime would be substituted the laws and regulations of the Dominion of Canada.

"While under a strict construction of the terms of Sections 4511 and 4512 of the Revised Statutes shipments of seamen on foreign vessels in ports of the United States might be required to be made before United States shipping commissioners, yet I am informed by the Treasury Department that the law has never been so applied, and that such shipments have invariably been allowed to be made before the foreign consular officer in accordance with foreign regulations, on the ground that such action was demanded by international comity. This Government, however, expects and requires reciprocal treatment for its vessels in the ports of other countries, and the Treasury Department does not at present recall any instance other than that now under consideration in which such reciprocal treatment is not accorded.

"It is hoped that Her Majesty's Government will take the necessary measures to secure such treatment for American vessels in Canadian ports.

"You will communicate a copy of this instruction to Her Majesty's Government."

Inasmuch as the intention of Congress is not clearly stated in the provisions of the Act, it is submitted that this Court should confine the operation of §4530 to the territorial limits of the United States, and hold it inapplicable to foreign seamen serving on foreign vessels under a contract lawfully made in a foreign country; and should not so construe the general language of the statute as

to impute to the legislative body an intent to regulate rights and obligations beyond the boundaries of the nation or state from which such legislative body derives its authority.

The respondent's brief in the court below contained elaborate quotations from the Congressional Record for the purpose of showing that it was the intent of Congress to make this Section applicable to such a case as this.

We presume the same point will be urged here.

The reports of Committees are cited to show this intent.

It does, however, appear from the Congressional Record that there was considerable debate in Congress as to the application of this Act to foreign vessels. Opposition was advanced by members of Congres on the ground that such an application would be a violation of International Law and that it was doubtful whether Congress had such power.

In the Second Session of the Sixty-third Congress the majority report of the House of S. 136 stated in part as follows:

> "It should be stated that the Committee are not unanimous in making this provision apply to foreign ships.
>
> Some members of the Committee doubt our right and the wisdom of making it apply to foreign ships, and question its value to our merchant marine."

In the Third Session of the Sixty-second Congress, in presenting a report from the Committee on Commerce to the Senate, Senator Burton said:

"* * * We do not believe that we have any right to interfere with the management of foreign ships and articles signed abroad."

While the history of a statute from the time it is introduced until it is finally passed may afford some aid to its construction, the views and votes of individual members expressed in debate are not legitimate aids to its construction. *United States* vs. *Union Pacific R. Co.,* 91 U. S., 72; *Holy Trinity Church* vs. *United States,* 143 U. S., 457, 464; *United States* vs. *Trans Missouri Freight Assn.,* 166 U. S., 290, 318; *Johnson* vs. *Southern Pacific Co.,* 196 U. S., 1; *Downe* vs. *Bidwell,* 182 U. S., 244, 254.

However, it has been held by this Court in the case of *Lincoln* vs. *United States,* 202 U. S., 484, that where an act of Congress is passed over opposition of a minority, as in this case, it is to be considered that the words of the Act represent all the majority deemed it safe to ask.

In that case Mr. Chief Justice Fuller said at page 498:

"Moreover, the Act of July, 1902, was passed with full knowledge and after careful consideration of the decision of this Court, and Congress was aware that grave doubt, at least, had been thrown upon its power to ratify a tax under circumstances like the present. * * *

"It should also be remembered that there was a powerful opposition in Congress and

> that the phraseology of the act probably represents all that it was deemed safe to ask. Every consideration requires that the ambiguous language of the act should not be stretched beyond the exact and literal meaning of the words. * * *"

This rule is particularly applicable here where the Congressional Record shows there was much opposition in making this Act applicable to foreign contracts of foreign seamen on foreign ships.

It therefore is submitted that Congress did not intend to give the Act a broader application than given by the literal meaning of the words, where to do so would violate the rule of International Law and comity, and perhaps given it an application in excess of the power of Congress.

POINT TWO.

IF SECTION 4530 OF THE SEAMEN'S ACT BE APPLICABLE TO THE CASE AT BAR IT IS UNCONSTITUTIONAL.

A. *If the provisions of this section which do not specifically apply to foreign seamen of foreign vessels are construed by this Court to apply to the case at bar, the effect of such a construction would be tantamount to holding that Congress may legislate as to contracts made on foreign soil and affecting only foreigners.*

Part of Section 4530 provides: "And all stipulations in the contract to the contrary shall be void."

The contract with the libelants was made at a port of Australia and if the words quoted are held to apply to the contract, this Court will be sanctoining interference by Congress with the law of a foreign friendly power. That Congress possesses any such power has been denied by this Court in the case of *The Apollon,* 9 Wheat 362, where, in holding that statutes cannot be made applicable in such a way as to nullify contracts made between foreigners in foreign jurisdiction without transscending the legislative powers and jurisdiction of the United States, Mr. Justice Story said:

> "The laws of no nation can justly extend beyond its own territory except so far as regards its own citizens."

The Constitution of the United States is a grant of power and the various departments of the Fed-

eral Government possess only those powers which are expressly or impliedly conferred on them by the Constitution. *South Carolina* vs. *United States,* 199 U. S., 437. By no possible stretch of the power to regulate commerce conferred on Congress by the Constitution, can it be said that Congress possesses the power to regulate contracts of foreign shipowners and foreign seamen made in Australia.

In the case of *Brown* vs. *Duchesne,* 19 How., 183, Chief Justice Taney said, at page 198:

> "Congress may unquestionably, under its power to regulate commerce, prohibit any foreign ship from entering our ports * * * or may prescribe the terms and regulations upon which such vessels shall be allowed to enter. Yet it may be doubted whether Congress could by law confer on an individual or individuals, a right which would in any degree impair the constitutional powers of the legislative or executive departments of the Government or which might put it in their power to embrarras our commerce and intercourse with foreign nations or endanger our amicable relations."

B. §4530 *of the Seamen's Act deprives the defendant of its liberty to contract and is in direct violation of the Fifth Amendment of the Constitution.*

By virtue of the Commerce Clause, Congress is empowered to legislate with respect to such matters affecting interstate and foreign commerce as regulation of seamen's contract of service, but in

the exercise of this constitutional power Congress must not in general violate other prohibitions of the Constitution, such as the Fifth Amendment.

It appears to be well settled that the interference with the liberty to contract on such terms as may be advisable to the parties to the contract is a deprivation of liberty, without due process of law. *Allgeyer* vs. *Louisiana,* 165 U. S., 578.

In that case the provision of an Act of Louisiana that any person, firm or corporation * * * who, in any manner whatsoever does an act in that state to effect for himself or for another insurance on property then in that state in any marine insurance company which has not complied in all respects with the laws of the state shall be subject to fine, was held a violation of the Constitution of the United States, when applied to a contract of insurance made in the State of New York with an insurance company of that State, where the premiums were paid and where the loss was to be paid.

The Court said, at page 589:

> "The liberty mentioned in that amendment (14th Amendment) means not only the right of the citizen to be free from the mere physical restraint of his person as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or vocation and for that purpose to enter into all contracts which may be proper, necessary and essential to his carry-

ing out to a successful conclusion the purposes above mentioned."

It is well settled that the phrases in the Fourteenth and Fifth Amendments are construed in the same manner, although the Fifth Amendment restricts the Federal legislation and the Fourteenth Amendment restricts the legislation of the States.

It is true that in derogation of the Fifth Amendment Congress may legislate in such a manner as to deprive persons of the liberty of entering into certain contracts, but the justification for such legislation has always been motives of policy based on the exercise of police power.

In *Patterson* vs. *The Bark Eudora*, 190 U. S., 169, relied on by the court below the Court considered the act prohibiting the payment of seamen's wages in advance. The seamen in question were paid in advance and later libeled the owners for the full wages without deduction of the advance. A decree was entered for the full amount in their favor. The Supreme Court held that although this congressional prohibition was in derogation of the rights guaranteed to persons under the Fifth Amendment, still it was proper under the guise of the exercise of the police power. The Court, at page 175, went fully into the consideration of the wrongs which are likely to happen to seamen as a class when they are paid in advance:

"The story of the wrongs done to sailors in the larger ports, not merely of this nation but of the world, is an oft-told tale, and many have been the efforts to protect them against such

wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and having thus acquired a partial control, and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea, the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

In order to justify any legislation under the police power it must appear plainly that the legislation has a tendency to rectify the conditions which the legislative body has thought it needful to remedy. The courts will look through the form of any legislative enactment and get at the substance of the matter.

In *Booth* vs. *Illinois,* 184 U. S., 425, for example, at page 429, the Court said:

"If looking at all the circumstances that attend, or which may ordinarily attend, the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say

that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law. *Mugler* vs. *Kansas,* 123 U. S., 623, 661; *Minnesota* vs. *Barber,* 136 U. S., 313, 320; *Brimmer* vs. *Rebman,* 138 U. S., 78; *Voight* vs. *Wright,* 141 U.S., 62."

The contract in question here is valid here as well as where it was made and is not in any sense contrary to public policy.

It is submitted that Section 4530 does not even attempt to legislate to the benefit of the seaman. It goes directly contrary to the policy of the early act of 1898, which was held constitutional in *Patterson* vs. *The Bark Eudora, supra.*

Under this section the seamen is in no way protected from his traditional traits of throwing away his hard-earned wages in loose living and dissipation in the ports to which his vessel takes him. The right to demand and obtain half of his wages is a temptation to him to go ashore and squander it, and furthermore, during the course of his dissipation also, he is very apt to desert the ship, and in consequence thereof lose half of his wages.

The right to demand payment of half wages at every port of discharge, in disregard of the articles, might lead to desertion by the whole crew immediately upon the vessel's arrival; and, as seamen could not be reshipped on the next ensuing voyage until the ship was ready to sail, vessels would be deprived of the assistance of their crews in ports and discipline impaired, if not destroyed.

Owing to the extraordinary conditions in ship-

ping arising from the war, there is no reliable basis as yet for an opinion that the Seamen's Act has affected commerce or in any legitimate way benefited seamen, except by the abolishment of imprisonment for desertion. It has, indeed, enabled them to desert with a smaller pecuniary loss than formerly had been involved; but whether this has been of advantage to them may be seriously doubted.

It is a fact that the wages of seamen have advanced since the Act was passed, but probably the advance was due to war conditions rather than to the statute.

Great embarrassment, on the other hand, has been caused to ship-owners. Innumerable protests have been sent by ship-owners to Members of Congress and the executive branch of the Government.

Chambers of Commerce and commercial organizations throughout the country have protested against the Act and have passed resolutions urging its repeal.

The only effect that the Act has produced up to the present is that seamen on incoming vessels habitually demand one-half wages under the Act immediately upon arrival, and leave the ship at once. Crews are constantly changing, discipline is impaired, and unnecessary expenses are incurred.

However, whatever may be said as to the effect of the Act on our commerce, it is clear that Section 4530 in so far as it applied to foreign seamen on foreign vessels temporarily coming into our harbors, is not within the power of Congress as a regulation of commerce.

C. *Although the Federal Legislature is not prohibited from passing laws impairing the obligation of contracts, it cannot deprive a person of property without due process of law.*

In the case of *Hepburn* vs. *Griswold,* 8 Wall., 603, the Chief Justice, in stating the rule on the subject, said, on page 623:

> "It is true that this prohibition is not applied in terms to the government of the United States. Congress has express power to enact bankrupt laws, and we do not say that a law made in the execution of any other express power, which, incidentally only, impairs the obligation of a contract, can be held to be unconstitutional for that reason.
>
> But we think it clear that those who framed and those who adopted the Constitution, intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we cannot doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the obligation of contracts, is inconsistent with the spirit of the Constitution."

In *McCracken* vs. *Hayward,* 2 Howard, 608, Justice Bradley said, on page 612:

> "In placing the obligation of contracts under the protection of the constitution, its

framers looked to the essentials of the contract more than to the forms and modes of proceeding by which it was to be carried into execution; annulling all state legislation which impaired the obligation, it was left to the States to prescribe and shape the remedy to enforce it. The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution."

In the *Sinking Fund Cases*, 99 U. S., 700, on page 718, the Court observed:

> "They (the United States) are not included within the constitutional prohibition which prevents states from passing laws impairing the obligation of contracts, but equally with the states, they are prohibited from depriving persons or corporations of property without due process of law."

See Cooley's *Constitutional Limitations*, 7th Edition, 507, where he lays down the rule or principle known to our system of law under which private property cannot be taken from one person and transferred to another for the private use and benefit of such other person whether by general law or by special enactment.

In the present case there is a valid contract between the parties for the employment of the respondents by which their wages are not due until the end of the voyage. This contract was made before the act went into effect as to foreign vessels. If the Seamen's Act be applicable and under it the owners of vessels are forced and made liable to pay money or wages in violation of the provisions of a contract, it would amount to the taking of property from them without due process of law.

In this instance, if this Act be applicable to the case at bar, Congress did not merely pass a law impairing the obligation of a contract which it has a right to do to the extent of taking away the remedy for the enforcement of a contract, but created a liability on the shipowner in direct contravention of the terms and provisions of a legal binding contract and therefore violated the constitution by taking property without due process of law.

If this may be done, there would not be anything to prevent Congress from passing a law pro-

viding for the imposition of a fine or penalty on a foreign vessel for an act done wholly within the foreign jurisdiction to be enforced when the vessel later came within a harbor of the United States. November, 1919.

LAST POINT.

THE DECREE OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT SHOULD BE REVERSED AND THE LIBEL DISMISSED.

Respectfully submitted,

KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant-Petitioner.

L. DEGROVE POTTER,
JOHN M. WOOLSEY,
of Counsel.

Supreme Court of the United States

J. M. THOMPSON, Master and Claimant of the Steamship *Westmeath*, her engines, etc., Claimant-Petitioner,

against

PETER LUCAS and GUSTAV BLIXT, Libelants-Respondents.

October Term
No. 391.

BRIEF FOR LIBELANTS-RESPONDENTS.

SILAS B. AXTELL,
Proctor for Libelants-Respondents.

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CITATIONS.

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Statement.

The facts have been correctly stated by the claimant-petitioner and will not be repeated here. Neither seaman was an English subject. There is no need for further comment, except to say that the only material difference in the situation here and that existing in the *Dillon-Strathearn* case is that the seamen in this case entered into the contract before the Seamen's Act had gone into effect, whereas in the former case the contract was made after the act was in effect, to wit, March 4,

1916, as to foreign vessels, of which the *Westmeath* was one. The contract in the *Dillon-Strathearn* case was made in May, 1916; in the present case in December, 1915.

The demand for half wages, on which this action is based, was made at New York in April, 1916. It may or may not be considered of importance, but the record shows that the captain of the *Westmeath* expected at the time of hiring the men in Australia to bring the ship to America. (See Findings of Fact by District Judge Chatfield, fol. 76.)

> "The captain agreed to take these men as seamen to the United States and evidently promised to discharge them in New York upon obtaining substitutes at that port."

The questions of law, therefore, if there are any, are the same as in the *Dillon-Strathearn* case, except as to the five-day clause. First, is the section intended to affect foreign seamen on foreign ships? Second, is it enforceable against foreign vessels? Third, does the fact that the contract was entered into before the act was actually in effect, but after it was passed, when the parties contemplated coming within the jurisdiction, make any difference? We would answer the first two in the affirmative and the third in the negative.

POINT I.

Section 4530 means what it says. Seamen on foreign vessels while in ports of the United States have a right to receive half the wages standing to their credit, and the Courts of the United States are open to them for collection.

If Congress did not mean this, when it said it, why did they take the trouble to direct the President to abrogate all treaties which might interfere with the enforcement of the act? It was not necessary to abrogate treaties in order to extend these rights to seamen on American vessels, for there were no treaties interfering with our control of *our* seamen.

Section 16 of the Seamen's Act reads:

> "SEC. 16. That in the judgment of Congress articles in treaties and conventions of the United States, in so far as they provide for the *arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of the United States in foreign countries, and for the arrest and imprisonment of officers and seamen deserting or charged with desertion from merchant vessels of foreign nations in the United States and the Territories and possessions thereof,* and for the co-operation, aid and protection of competent legal authorities in effecting such arrest or imprisonment and any other treaty provisions in conflict with the provisions of this Act, ought to be terminated, and to this end the President be, and he is hereby requested and directed, within ninety days after the passage of this Act, to give notice to the sev-

> eral governments, respectively, that so much as hereinbefore described of all such treaties and conventions will terminate on the expiration of such periods after notices have been given as may be required in such treaties and conventions."

If there had been any question about the intent of Congress, the language of this section of the act would clarify it, for it necessarily includes foreign seamen and officers who may be charged with desertion in American ports.

It must be concluded that the act does mean *foreign* vessels, for it says foreign vessels, and a British vessel was a foreign vessel in April, 1916.

As to what the word "seamen" means, this part of the statute is fully discussed in libelants-respondents' brief in the *Dillon-Strathearn* case, Point I.

Cases relied on as to interpretation are:

> *U. S.* v. *Fisher,* 2 Cranch., 352-366;
> *U. S.* v. *O. & C. Ry. Co.,* 164 U. S., 526-541;
> *Cornell* v. *Coyne,* 192 U. S., 418-430;
> *Hamilton* v. *Robertson,* 175 U. S., 414-421.

The majority and minority report, Merchant Marine and Fisheries, S. 136, 63rd Congress, Second Session, 852, page 10, quoted on pages 8 and 9 of our brief in the *Dillon-Strathearn* case.

This understanding was had by the United States Circuit Court of Appeals and the Trial Court in this case, as well as in the *Dillon-Strathearn* case, and was likewise applied by the Federal Courts in the following instances:

Ivertson, 237 Fed., 498;
London, 241 Fed., 863;
Meteor, 241 Fed., 735;
Talus, 242 Fed., 954;
Delagoa, 244 Fed., 835;
Lucas v. *Westmeath;*
Dillon v. *Strathearn.*

The power of Congress to do what it has done, and the intent to affect foreign vessels being evident, counsel for the ship endeavors to urge that an interpretation suggested in the language of Judge Neterer in *The Ixion,* 237 Fed., 142, would be more appropriate here, because it is less disruptive of foreign commerce.

The decision of Judge Neterer referred to was the first reported case of the enforcement of Section 4530. While Judge Neterer did not go into the matter fully, he held that surely the statute gives the seaman a right to half the wages earned while the vessel was actually in the waters of the United States. His decision had the effect, however, of giving them all the wages they had earned since the commencement of the voyage. So the decree, as enforced, was the same as it would have been had it been enforced against an American ship. Still they argue that our Courts should apply the act as to foreign ships, so as to give the seaman a right to demand only that portion of the wages which are earned while the vessels are actually in the jurisdiction of the United States. Such a meaning has never been suggested for the statute during all the 129 years of its existence (1790). The seamen on American vessels have been accustomed up to this time to receiving a portion of their wages in foreign as well as domestic ports

and have received one-half the wages due them and unpaid at the time of demand. Such a meaning is, we believe, the right one, as stated by Judge Van Fleet in the *Ivertson* case, 237 Fed., 500:

> "While, somewhat awkwardly expressed, what the statute really means, I think, is that, deducting previous advances, the seaman shall be entitled to receive one-half of the balance of any wages earned and remaining unpaid at the date of demand. In this view the purser's computation would not result in ascertaining correctly the half of the wages then earned. The entire wages earned by petitioner up to that date was $47.99. He had been paid at Sydney $14.80. This left on the date in question the sum of $33.19 earned over and above the previous payment, one-half of which was $16.59. This latter sum constituted one-half of petitioner's wages earned and unpaid up to that date. That this is the correct construction, is I think, borne out by the section as it stood before amendment. It then provided (Act of 1790):
>
> (Act of 1790) 'Every seaman shall be entitled to receive from the master of the vessel to which he belongs, one-third part of the wages which shall be due to him at every port where such vessel shall unload and deliver her cargo before the voyage is ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast is fully discharged at the last port of delivery, he shall be entitled to the wages which shall be then due.'
>
> Quite clearly under that language the wages due would be the sum to be paid the seaman if the shipping articles actually terminated at the intermediate port. Strictly speaking, the wages were not 'due' at the intermediate port, as only one-third, as the

> statute then stood, was payable at that time. Evidently it was for this reason that, when the section was amended, the words 'which he shall have then earned' were substituted for the word 'due.' But that Congress did not intend to change the relative amount made payable to the seaman is evident, when it is considered that under the method of computation adopted by the purser only comparatively insignificant sums would be payable at the second or any other intermediate port at which the vessel should subsequently touch. The purser began his halving process a step too soon." (This language is found on page 500.)

Counsel for the ship urges that Section 4530, when applied to foreign seamen on foreign vessels, be given as limited a meaning as possible, for the reason that the act was opposed by a minority in Congress.

We are not impressed with the cases cited. It seems to be a veiled attempt to induce this Court to usurp the province of the Legislature, by leaving out of the act something that has distinctly and deliberately (considering divergence of opinion in Congress as to expediency) been placed there by the Legislature.

The debates in Congress, if they indicate anything, prove that there was a meeting of the minds on the purpose, as well as the effect, of this legislation. It is conceded that the effect of the Seamen's Act is revolutionary. It gives to a great class of workers a degree of self-control that they never enjoyed before. It gives it to them in all ports of the world on vessels of the United States, and on foreign vessels while here. The economic effect will, in time, free them everywhere, and who says they should not be free?

The act must be given the effect that its words imply. The language of Judge Hough in the present case seems to us sufficient.

> "It is, however, urged that any interpretation of the act which enables a seaman on a foreign ship to accomplish that which is embodied in the decree appealed from—is violative of the fifth amendment in that it interferes 'with the liberty to contract on such terms as may be advisable to the parties to the contract,' and is therefore a 'deprivation of liberty without due process of law'; and for this reliance is placed upon *Allgeyer* v. *Louisiana*, 165 U. S. 578.
>
> In our opinion this very contention was in substance made in *Patterson* v. *The Eudora*, 190 U. S. 169, and there disposed of, and this decision was recently approved in *The Talus* (S. C. U. S. Dec. 23, 1918).
>
> The employment and discharge, treatment, status and punishment of merchant seamen has long been a part of the regulation of waterborne commerce. With the advisability or expediency of declaring all seamen, irrespective of nationality, to have a status, or be entitled to treatment when within a harbor of the United States totally differing from the treatment or status accorded them in every other part of the world—we have no concern—but entertain no doubt of the power of Congress to enact this statute as a commercial regulation."

It is argued that the Seamen's Act should be limited in application to the right to demand half the wages *earned while the vessel is actually in the waters of the United States.* In other words, it is contended that if the vessel comes into the port of New York, for instance,

on the 1st of December, 1919, and remains until the 15th of December, the crew would be entitled to receive one-half the wages they have earned. The present rate being $75 per month, they would be entitled to one-half of $37.50, or $18.75. If this half is refused, then what is the seaman entitled to? Under the theory suggested by the shipowner, he would be entitled to $37.50, but the act plainly says "any failure on the part of the master to comply with the demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned." This surely means wages since the commencement of the voyage. This has been the effect given to the act by every decision of the United States District Court, where the section has been considered. The latest reported case is *The Sutherland,* District Court of Maine, decided May 19, 1919, 260 Fed., 247.

It comes back to the proposition that this Court must interpret this section, first, as it is applicable to American ships; give to it the natural and reasonable construction that it should have in view of the language of the previous amendments to the statute, the present and past condition of our merchant marine; then apply the act in the same manner to the foreign vessel that chances to come within its effect. It is presupposed that in this operation this Court will follow the rule laid down by the majority in the *Neilsen-Rhine* decisions, to wit (248 U. S., 205):

> "But we are unable to discover in passing this statute Congress intended to place American shipping at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

I would respectfully refer the Court to the previous phraseology of this act of Congress. It was the act of July 20, 1790:

> "Every seaman shall be entitled to receive from the master of the vessel to which he belongs, *one-third part* of the wages which *shall be due* to him at every port where such vessel shall unload and deliver her cargo before the voyage is ended, unless the contrary be expressly stipulated in the contract; and as soon as the voyage is ended, and the cargo or ballast is fully discharged at the last port of delivery, he shall be entitled to the wages which shall be then due."

This was amended by the act of December 21, 1898, to read as follows:

> "Every seaman on a vessel of the United States shall be entitled to receive from the master of the vessel to which he belongs *one-half part of the wages* which shall *be due him* at every port where such vessel, after the voyage has commenced, shall load or deliver cargo before the voyage is ended unless the contrary be expressly stipulated in the contract; and when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him as provided in Section forty-five hundred and twenty-nine of the Revised Statutes."

The amendment of December 21, 1898, gave to seamen on American vessels one-half the wages due them, at a loading or discharging port. This section had no effect upon and did not apply to foreign vessels. The act of March 4, 1915, does apply and was intended to apply to foreign vessels.

The act of March 4, 1915, reads (italics ours):

> "SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs *one-half part of the wages which he shall have then earned* at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided,* Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: *Provided further,* That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further,* That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Is it possible that by this change Congress intended to give the seaman a right to demand a lesser portion of his wages than he had a right to before amendment?

As stated elsewhere in this brief, Congress looked into the matter of interfering with treaty provi-

sions. Congress considered previous decisions of the Supreme Court of the United States on the question of the right of Congress to control foreign vessels and seamen. The act was legislated deliberately and with the intent of bringing about certain things. It was to build up the merchant marine of the United States, improve conditions at sea, and if possible to drive the Oriental employee from the position that would be filled by the Caucasian if self rule did not prevail.

Here is an ambiguity and we invite the Court to here properly apply the rule sought to be improperly applied by our adversaries, to wit, when there is an obvious ambiguity in the meaning of the Act itself, look to the title of the act for light—with cases cited under opponent's brief, Point I, at pages 5 and 6, *Holy Trinity Church* v. *The U. S.*, 143 U. S., 457, etc.

The words "half wages earned" were inserted in the place of the words "then due" and the proviso "all stipulations in the contract to the contrary shall be void" was put in particularly to affect the contract existing between the foreign shipowner and his seamen, as well as provisions that might be inserted in contracts between seamen and the ship on American vessels which would sign away their rights given under the statute.

It must be conceded that Congress knew that foreign ships signed their seamen on in home ports for return voyages from one to three years' duration, with a provision that no wages were to be paid to the seamen, except at the option of the

master, until the end of the voyage in the home port. It was to build up the merchant marine of the United States. In other words, to create such conditions on board American vessels as would permit the employment of native Americans on board them, and then in order that the American ship should not be put at a disadvantage in competition with the foreign vessel, by reason of having created these conditions, these conditions were imposed likewise upon the competing foreign vessel.

The result was interesting and history has shown that the effect was to release the law of supply and demand as to labor. Wages were higher in America in shore employments than they were in shore employments in foreign countries. Wages of seamen in America were likewise higher, because Americans would go to sea only when the wages were an inducement. So the wages were correspondingly lower on foreign vessels than they were on American vessels. As long as these contracts were enforced by treaty obligations, it required our police power to arrest their seamen who broke the contracts. The seamen on foreign ships would remain in bondage; their wages remain stationary. The American ship, when it came to close competition where the 4 to 6 per cent. wage operating cost counted, would be run out of business. Danish ships were chartered and put in competition with American vessels in the sugar trade before the act was passed, and were able to under-bid American shipowners by reason of the fact that their labor cost was less. To-day Danish ships can offer no cheaper freight rate to shippers than can the American ship, for their wages are just the same as they are on American ships.

The effect of Section 4530, as enforced against foreign vessels in 1916, 1917 and up to the present time, has been this—when seamen on foreign vessels have come to our ports dissatisfied with the wages or other conditions prevailing on the ship, they have demanded half wages. If the demand was refused, they sought their remedy in court, the same as seamen on American ships could do under the circumstances. If they left the ship, as they usually did when the demand for half wages was refused, a vacancy was created which had to be filled before the vessel could depart. That meant that the foreign ship had to go into the American labor market to replenish her crew. It is not easy to operate a ship with part of the crew at $75 per month and the rest of them, engaged in the same labor, receiving $50 per month. So it was that in October, 1917, British and foreign shipowners gradually raised their wages at home ports to the American standard.

The result of the enforcement of the act as to American ships has not been wholesale desertion of seamen because of the arrest provision of the act. Quite to the contrary, desertion from American ships are hardly ever heard of. Since higher wages have been paid on foreign ships, desertion in our ports from their ships are very rare.

I urge these particular conditions, because this Court, in the case of *Robertson* v. *Baldwin,* 165 U. S., 275, seemed to think that the enforcement of strong penalties was necessary to the maintenance of a crew aboard a ship. To-day men work by *reason of hope* rather than *fear.* We are rapidly approaching the time when it will be necessary to carry the democracy which we practice in our political life into our industrial life. Those

who are producing and working demand rightfully to share in the profits of their toil. Profit-sharing schemes of various sorts have been adopted by many of the most successful industrial organizations in America.

The number of native Americans on board our vessels at the present time, according to reports filed with the Department of Labor, has increased from 5 per cent. of the total to 55 per cent. of the total since 1912 in overseas trade. When we consider that our overseas merchant marine has increased from less than a million tons to ten million tons in the same period, it is most remarkable. The total world tonnage to-day is no greater than it was in 1912, but 10,000,000 tons of it, or one-fourth, is under the American flag and over half the men, exclusive of officers, are American citizens. More than 75 per cent. of the balance, composed of aliens, have obtained their first papers, indicating their desire to become citizens of the United States.

Now the English protest that this is wrong; that we are taking their seamen. We are not sure that the same cry did not go up between 1790 and 1812. It may have had something to do with the repressment of seamen by the British "men of war," which brought on the War of 1812. How much of it was due to this original act, giving seamen on American ships some liberty, we don't know. But of this much we are certain, so long as America is giving to human beings justice and right, and there is nothing detrimental to the interests of human beings in the enforcement of this section, it cannot be offensive to the people of England, no matter what the government of England says or does.

And with this view of the effect of the statute we need not fear retaliatory legislation. Let England do all she will to improve the conditions of the seamen on her own ships and extend that doctrine and enforcement to foreign ships, including ours. So long as it is in the interest of humanity, it will never injure American ships, but benefit them. This is the view of the whole matter (as I urge in other parts of this brief) that should be taken by the British Government and others opposing.

POINT II.

Section 4530 is constitutional and enforceable against foreign vessels to the same extent that it is enforceable against domestic vessels.

What is really urged here by the foreign shipowner is that a contract, valid where made, should not be interfered with. That, inasmuch as certain property interests are vested in the contract, the Court, in giving no effect to the contract or failing to enforce it, is violating the Constitution of the United States.

As pointed out in the brief of the libelants-respondents in the case of *Dillon* v. *Strathearn*, Congress of the United States is not invalidating the contract, but it refuses to give force or recognition to the contract in our courts. What the shipowners are really trying to do is to get our Courts to give this contract, which requires continuous service on the ship, until the end of the voyage, force and effect in a jurisdiction where the

public policy of the country is distinctly and definitely to the contrary.

But the power of Congress to invalidate foreign contracts cannot be doubted. The proposition is hardly debatable and worthy of the great amount of space occupied in supporting it in the briefs filed for foreign interests here. If the Supreme Court holds that Congress has not the power to pass and enforce any law it sees fit as to conditions under which foreign vessels may enter our ports, for the purposes of trade, it will strip the United States of its sovereignty. As Chief Justice Marshal said in *The Exchange,* 7 Cranch., 116, "the jurisdiction of the nation within its own territory is necessarily exclusive and absolute and is susceptible of no limitation not imposed by itself." It would seem that the right of Congress to impose duties on goods imported from foreign countries into the United States could be seriously questioned if foreign countries took the precaution to make contracts in conflict with the tariff law of America. It would seem that foreign steamship companies could override the provisions made by Congress to protect the health and morals of the citizens of the United States by contracts providing for the bringing of diseased and otherwise undesirable persons into the United States. Our right to exclude foreign ships from competition in our coastwise trade could be upset by the use of contracts, if such a doctrine were to prevail.

When the nations of Europe were first beginning in the fourteenth, fifteenth and sixteenth centuries to extend their commerce, each asserted certain rights to control the seas. Great Britain claimed and actually exercised dominion over certain waters adjacent to her islands known as the British Seas.

Catherine of Russia, the King of Spain and the King of Portugal also exercised certain exclusive jurisdiction over the seas adjacent to shores, while the Italians, Greeks and others struggled for control of the Mediterranean. In later years the question of the control of the seas or freedom of the seas became a serious one between Holland, France and England, various wars ensued and, finally, the doctrine that the navigable waters of the world should be free to the use of all people came into a less nebulous state, but no one has seriously contended until now, that any nation had lost the control of its own territorial waters by reason of the gradual extension of this doctrine.

The United States, in its effort to carry freedom of the seas to the man of the sea, deserves the approbation of mankind.

In *The Wildenhus*, 120 U. S., 1, Chief Justice Waite said:

> "It is part of the law of civilized nations, that when a merchant vessel of one country enters the port of another, for the purposes of trade, it subjects itself to the law of the place to which it goes, unless by treaty or otherwise, the two countries have come to some different understanding or agreement."

That case was cited with approval by this Court in the *Bark Eudora*, 190 U. S., 177. The same contentions as to the liberty of the contract and unconstitutionality urged here were made in the *Bark Eudora*, and were there disposed of. In *The Eudora* the contract was made in the United States, to be performed on a British vessel. Cases were cited to the effect that as the performance was to

be had on a British vessel, the laws of the United States could not be used to invalidate it. The Court, at page 174, said:

> "We are unable to yield our assent to this contention. That there is, generally speaking, a liberty of contract which is protected by the Fourteenth Amendment, may be conceded, yet such liberty does not extend to all contracts. As said in *Frisbie* v. *United States*, 157 U. S., 160, 165:
>
> 'While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of the liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts, as well as all individuals from some contracts. It may deny to all the right to contract for the purchase or sale of lottery tickets; to the minor the right to assume any obligations, except for the necessaries of existence; to the common carrier the power to make any contract releasing himself from negligence, and, indeed, may restrain all engaged in any employment from any contract in the course of that employment which is against public policy.'"

The last paragraph of the opinion in *The Eudora*, at page 179, is interesting in view of the contention of the shipowner, that the law should be interpreted one way as to foreign vessels and another as to domestic vessels:

> "We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels."

POINT III.

The Seamen's Act and all of its parts is remedial in character and should be liberally interpreted with a view to effecting the purposes intended.

Scott v. *Reid,* 10 Peter, 524-526;
Park v. *Turner,* 12 How., 39;
U. S. v. *Nickerson,* 17 How., 204, 209;
U. S. v. *Padelford,* 9 Wall., 531, 537;
U. S. v. *Hodson,* 10 Wall., 395;
Insurance Co. v. *Dunn,* 19 Wall., 214, 224;
Telegraph Co. v. *Eiser,* 19 Wall., 419, 427;
Texas v. *Chiles,* 21 Wall., 488, 491;
McBurney v. *Carson,* 99 U. S., 567;
Jones v. *Guaranty Trust Co.,* 101 U. S., 622;
Gertgens v. *O'Connor,* 191 U. S., 237;
Beley v. *Naphtaly,* 169 U. S., 353, 359;
N. Y. etc. Ry. Co. v. *Int. Comm.,* 200 U. S., 361;
Bank v. *Dearing,* 91 U. S., 29, 35.

Under this point, which is an important one, it seems to me we should go into the practical conditions that gave birth to this act, the conditions which existed at the time of its passage and the result which has followed its partial enforcement.

The Seamen's Act, so far as it relates to the status of seamen, was a direct result of the decision of the Supreme Court of the United States in the case of *Robertson* v. *Baldwin,* 165 U. S., 275, which holds with relation to Sections 4598 and 4599, the seaman's contract was a peculiar one and arrest for desertion or breaking of a civil contract *was*

not in conflict with the Thirteenth Amendment. The Court in that instance held, at page 282:

> "From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving, to a certain extent, the surrender of his personal liberty during the life of the contract. Indeed, the business of navigation could scarcely be carried on without some guaranty, beyond the ordinary civil remedies upon contract, that the sailor will not desert the ship at a critical moment, or leave her at some place where seamen are impossible to be obtained—as Molloy forcibly expresses it, 'to rot in her neglected brine.' Such desertion might involve a long delay of the vessel while the master is seeking another crew, an abandonment of the voyage, and, in some cases, the safety of the ship itself. Hence, the laws of nearly all maritime nations have made provisions for securing the personal attendance of the crew on board, and for their criminal punishment for desertion, or absence without leave during the life of the shiping articles."

As indicating the influence of the *Robertson-Baldwin* decision, I refer the Court to the speech of Senator George Sutherland before the United States Senate October 21st, 1913, reported at page 66 of the Congressional Record of that date.

> "Mr. President, *I may pause at that point long enough to say that my attention was recently called to the decision of the Supreme Court of the United States in the One hundred and sixty-fifth United States, in which I was somewhat astonished to read the opinion of the majority of the court, holding substantially what it stated here, that a seaman, notwithstanding the thirteenth amendment*

to the Constitution, could be bound to involuntary servitude, provided he had agreed in advance to serve upon the vessel for a particular length of time.

I say I was astounded to read that, because I had always believed that the provision of our Constitution with reference to involuntary servitude was wider than the question of slavery; that it meant precisely what it says; and that nobody could be compelled against his will to serve another for a single day. The Supreme Court said that because he had agreed in advance to accept this service or to bind himself to this service, he therefore voluntarily entered the service, and that the fact that he might conclude thereafter to quit the service would not render it involuntarily.

It seems to me that the fallacy in the argument of the court is perfectly plain, because although a man has made a contract to serve another for a particular length of time, the moment he concludes to repudiate the contract he becomes liable, of course, to an action for damages; but if having concluded to repudiate the contract he be compelled to comply specifically with the terms of the contract, his service from that moment becomes involuntary. Otherwise a man could bind himself for life to serve another, and in that way bind himself to a condition of slavery. I think the decision of Justice Harlan, who dissented from the majority decision of the court, proceeds upon the better reasoning."

It is quite true, as will be observed in the *Robertson-Baldwin* case, that governments, since the beginning of early time, have held seamen rigidly to their contracts of employment, with dire punishment for breaking. It is equally true that the institution of serfdom was well established and flourished in England and Continental Europe for

many centuries, while seamen were slaves of the sea. The shore servants finally obtained their liberty, and have maintained it in America. No man in the United States of America has been required to work by threat of jail sentence in any shore employment, except during the prosecution of a war, when such restraint of personal liberty was necessary in order to preserve the state.

The physical conditions that existed on the high seas when these contracts and customs grew up about the sailor were entirely different from the physical conditions that existed when the Seamen's Act was proposed and passed by Congress, and materially different from the conditions which exist to-day. Those contracts, laws and treaties calculated to hold the seaman to his ship and prevent desertion were developed when commerce was in its infancy. Substitute seamen were scarce or were with great difficulty obtained to take the place of deserters. All trade was carried in sailing vessels; a high grade of skill was requisite. Some ports were visited by ships only once in one or two years, and desertion of a crew under those circumstances was indeed disastrous. To-day the world's trade has grown a million fold. There is scarcely a port in the world that is not visited by one or more ships each month, while from the busy ports where seamen desire to leave there are a dozen or so clearances each day. The skill required of seamen in the operation of steam vessels is no longer so great, and these matters should be borne in mind. Seamen may desert their *ships* under the modern law, but they do not desert their *calling,* provided the conditions on the ships are favorable. In ports where seamen desire to leave the ships there are al-

ways seamen to take their places. The man who is not restrained of his liberty, who is given decent treatment, as most humans desire these days, seldom leaves the ship. At this stage of the world's development, those who do not treat their seamen in that manner deserve to lose their crews and to stand whatever financial penalty follows.

Certainly our Courts should not be called upon to enforce contracts of this sort, calling for involuntary servitude, when such contracts are so inconsistent with right and the whole tendency and trend of society, we again refer to the Congressional Record, page [illegible], date of October 21st, 1913, the speech of Senator LaFollette, who introduced the measure:

> "Mr. President, of course I am a landlubber and have to take my tutelage from those men who have been at sea. I never shall be able to express my very great obligation to Andrew Furuseth, who for the last four years has called upon me almost every Sunday morning to talk with me about this legislation. Andrew Furuseth is a sailor. He is a Norwegian Americanized, one of the most intelligent men it has ever been my good fortune to meet. For 19 years he has been sitting up there in that corner of the gallery waiting to be made free. Whatever I happen to know about this subject I have acquired from talking with him."

Ever since the *Robertson-Baldwin* decision, Furuseth has been striving to free the sailor. No man has given his life to a great humane cause more splendidly than Furuseth has given his.

Even Senator Burton, who opposed the Seamen's Act, in a speech on October 21st, 1913, said:

"Mr. President, there is one provision in the bill that I do not believe there will be a dissenting voice about in its relation to foreign nations. It is the abolition of arrest for desertion. It has been maintained that the arrest-for-desertion statute was passed in the early nineties of the century before the last; that a fugitive-slave law was passed at about the same time; and that they are very similar in their phraseology.

This bill is ingenious from the standpoint of the seamen. I am not going to blame them for it. It has three propositions: First, a man may desert without arrest; second, at any port into which he goes, on giving 48 hours' notice, he may have half his pay; third, no allotment shall be given out from his wages.

That makes it possible for the sailor to leave his employment whenever he chooses, and whether his contract is finished or not, whether the time for payment has accrued or not, he may receive half his wages.

I do not object to that kind of a provision as it relates to American seamen, but it is in direct contravention of international law and our treaties with foreign countries, and it has provoked vigorous protest from them. They say, 'you have no business to go on our ships and say, as you do here in this statute, that the courts of the United States shall be open to them.' This proviso is as follows:

'*Provided further,* That this section——'

That is the one relating to the payment of half wages after 48 hours of demand therefor. There was very little opposition to that from any person who appeared before the committee, but there is this proviso:

> *'Provided further,* That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.'
>
> That is a direct violation of treaties without any notice whatever that we intend or desire to terminate them.
>
> Now, let us see, first, what is the general international law on that subject. It is stated in the Wildenhus case, One hundred and twentieth United States, 11."

The bill as passed was amended to give due notice of abrogation of treaty provisions.

Surely Senator Burton cannot be presumed to have misunderstood the purposes of this act at that time.

If it occurs to this Court to give ear to the suggestion that has been made, that this act was intended to benefit only American seamen on foreign vessels, then let us consider for a moment what would be the result of such an interpretation. America, with a merchant marine of less than a million tons in overseas trade before the passage of this act, due to war emergency, contracted to build sixteen million tons of ships, equivalent to one-third of the world's total tonnage. Ten million tons are now afloat, and considering their hasty construction are successfully carrying one-third the world's trade. They are manned by crews, 55 per cent. of whom are citizens of the United States and 50 per cent. of the other 45 per cent. have their first papers (exclusive of officers). Due to the equalizing effect of the Seamen's Act and no other cause, and as indicated by the report of Governor Bass of Massachusetts, made to the

Shipping Board hereinafter referred to, the wages on foreign and American vessels within a few months after the Seamen's Act had taken effect, were practically equal. They are still practically equal. Capital is flowing into American ships.

What will result if this Court holds that Congress has exceeded its power in giving foreign seamen the same right to be free on foreign vessels, while in the waters of the United States, that seamen have while on American vessels? The seaman's wage cost in foreign countries will drop below the seaman's wage cost in America. The seaman on the foreign ship will be a slave to his vessel (for he cannot leave if he has no money). American ships will shortly be at a disadvantage, because they will have to pay higher wages. Such a condition of affairs a majority of this Court believed undesirable in the *Neilsen-Rhine* case. The words of Mr. Justice Day were:

> "But we are unable to discover that in passing this statute (See. 11 Advances) Congress intended to place American shipping at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

And again this Court has held in *The Eudora*, *supra*, at page 179:

> "Whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce those provisions in respect to foreign equally with domestic vessels,"

quoted in full under Point II.

An interesting side light on the meaning of Section 4530 is indicated by the speech of Senator Fletcher on October 21st, 1913, in the United States Senate, page 44, United States Congressional Record:

> "This riffraff, these derelicts that are picked up and used and put into positions of responsibility on these vessels, also set the rate of wages; they fix the standard of wages; and consequently again, that system is most demoralizing and to be deprecated.
>
> I speak then, for the men whose labors and skill are employed on the ships, as well as for the public who use the ships; and in doing that I speak also, I believe, for those who build, own and operate the ships. I speak for a merchant marine of dignity, capacity and strength commensurate with the position of the greatest commercial Nation of the world. England may take first place in the naval world; Germany may take first place in the military world; but America takes first place in the commercial world. As peace lasts longer than war, the latter is the most important place to take; and it means that a nation in such a position can dictate both in peace and in war, using only the weapon of trade, and will not likely need any other."

It is highly desirable that a thorough interpretation of Section 4530 be given by this Court so that shipowners, foreign and domestic, and seamen, may know just where they stand. It is briefly the seaman's contention that there should be given to this section the simplest meaning possible. We will assume that the power of Congress to do what it says it does cannot be questioned. Only two clauses of the act have been deemed ambiguous. First, the

provision as to five days, and, second, what is meant by "half wages earned."

The question of what is meant by five days will be disposed of under the case of *Dillon* v. *Strathearn*. Suffice it to say that it was held in the Circuit Court of Appeals that the provision that the demand shall not be made before the expiration of nor oftener than once in five days, relates to a certain time, to wit, the commencement of the voyage; the time at which the relationship of the seaman and vessel became fixed by the contract. In other words, after the voyage is commenced, at any loading or discharging port, the seaman is entitled to receive one-half the wages he has then earned which have not been paid. To apply any other interpretation is straining the language of the statute and would result in an irregular effect. For instance, many ships come into port, load and discharge and go out before five days elapse, others take longer.

One of counsel argued the case of *Janssens et al.* v. *Italier*, referred to by opponents, before the United States Circuit Court of Appeals for the Second Circuit. The decision by Judge Hough, admitted to be dicta "for the future guidance," came as quite a surprise, for counsel for the shipowner even had not urged that as a ground for dismissing the libel and the question was not argued by either side before the Court. It would seem, therefore, that with all due respect to Judge Hough, he has erred in that instance through failing to have given proper and careful consideration to the effect of his decision. In passing, it is only fair to note that the decision of the United States Circuit Court of Appeals for the Fifth Circuit in the *Dillon-*

amendments, not less. The interpretation suggested in Judge Neterer's decision is wholly out of the question as applicable to American vessels. The decision given in the *Nellman-London* case, 241 Fed., 863, is more reasonable, but still not the one intended by Congress, for the operation of that decision is to give the seaman less wages than he had before the act was amended. The bill was opposed by representatives of foreign shipowners, and the reports indicate that their understanding was the same as that of Mr. Schwerin.

Ever since the Seamen's Act has been enforced or attempted to be enforced by seamen, it has been opposed by foreign interests and by the British Government as *Amicus Curiae,* to wit: In *The Ixion, Nellman-London* and *Dillon-Strathcarn.*

The confusion and divergence of opinion as to the meaning of Section 4530, and particularly the words "half wages he shall have then earned," is due principally to the efforts of counsel engaged by the British Government. In the meantime the act has had the effect of giving American seamen half the wages they have earned, on demand, in a loading or discharging port, whether in American or foreign ports. The result has not been wholesale desertion of American ships by their crews. This control of his wages by the seaman has tended to stabilize him and make him more contented and efficient on American ships. Our vessels to-day are carrying smaller crews in ratio to tonnage than the vessels of any other nation. Japanese ships leaving from New York carry 20 per cent. larger crews than vessels of America. Desertions from American ships in foreign ports are practically unheard of.

Prior to the enforcement of the Seamen's Act, as indicated by reports filed by the Department of Commerce and Department of Labor, wages on foreign vessels were from 30 to 50 per cent. lower than on American vessels in the same trade. Wages on American vessels were advanced to $75 per month by agreement between the Seamen's Union and the Shipping Board and private owners in April, 1918; the agreement to last for the duration of the war. Within six months thereafter practically every vessel flying a foreign flag that touched in waters of the United States had raised its wages to the American level. In some countries they paid lower straight wages, but made up for the difference by paying a large bonus. While the foreign shipowners were making up their minds to pay a higher rate of wages, desertions were frequent from their ships. Our Courts enforced the act, but as soon as the foreign shipowner began to pay the rate of wages paid on American ships, desertions practically ceased. To-day, with the exception of Japanese and French vessels, all seamen's wages are about equivalent to the American rate.

The wage operating cost of American merchant ships is estimated at 4 to 6 per cent. of the total cost. Freight rates on American and foreign vessels have advanced 1,000 per cent. since 1914, and are still maintained at that high rate. The wages on American ships have advanced about 100 per cent. in the same period. Wages on foreign ships have advanced from an average of $30 a month to $85, or nearly 300 per cent., but the freight rates on foreign ships have advanced also 1,000 per cent. Therefore, we have at present an ideal condition on the seas.

The seas are free to all people for their trade. The law of the sea, due largely to decisions of this Court, is becoming uniform. Now, if we can, as the Seamen's Act has done, maintain the wage equilibrium that has been established by freeing the seaman from bondage, then the sea indeed will be free to commerce. In a short time foreign governments must yield to the demand of their own people to free their seamen or those governments will have no seamen.

The following excerpt from a report filed with the Department of Labor shows the remarkable increase of wages on foreign ships:

WAGES PAID SEAMEN AND FIREMEN ON VESSELS CLEARING FROM NEW YORK IN 1915.

Nationality	Date	Seamen	Firemen
	1915		
American	June 30	[1] $29.70 [2] 30.00	[3] $39.34 [3] 40.00
British	July	30.60	35.00
Dutch	November	28.20	32.90
Danish	December	30.00	35.00
Swedish	November	20.25	[4] 22.95

[1] 93 ships.
[2] 90 ships.
[3] Union scale.
[4] $6.75 bonus on round trip.

WAGES PAID SEAMEN AND FIREMEN ON AMERICAN AND FOREIGN VESSELS IN 1916.

Nationality	Date	Seamen	Firemen
	1916		
American	June 30	[1] $45.00	[1] $50.00
	do	[2] 43.88	[3] 48.95
British	March	30.00	35.00
	July	45.00	50.00
Dutch	do	45.00	50.00
Danish	June	45.00	45.00
	July	45.00	50.00
Swedish	do	20.25	[4] 22.95
French	November	19.30	[5] 25.09

[1] Union scale.
[2] 93 ships.
[3] 92 ships.
[4] Plus bonus of $9.45.
[5] Plus bonus of $3.86.

WAGES PAID SEAMEN AND FIREMEN ON AMERICAN AND FOREIGN VESSELS IN 1917 AND 1918.

Nationality	Date	Seamen	Firemen
	1917		
American	June 30	[1] $57.58	[2] $60.55
	do	[3] 60.00	[3] 60.00
	Aug. 1	[4] 60.00	[4] 60.00
English	April	45.00	50.00
	October	55.92	58.40
Dutch	March	65.00	70.00
Danish	do	45.00	[5] 50.00
	May	56.00-60.00	[6] 60.00
Swedish	November	20.25	[6] 22.95
French	August	21.23	[7] 27.02
	1918		
American	May	75.00	[8] 75.00
British	October	55.92	[9] 58.40
Dutch	February	60.00	60.00
	November	70.00	70.00-75.00
Danish	October	75.00	75.00
Swedish	March	20.25	[6] 22.95
	December	75.00	75.00
Norwegian	do	75.00	75.00
French	May	27.98	[10] 33.78

[1] 93 ships.
[2] 92 ships.
[3] Union scale.
[4] Shipping Board scale.
[5] Plus 50 per cent bonus.
[6] Plus $27 bonus.
[7] Plus $3.86 bonus.
[8] Plus 50 per cent bonus in war zone.
[9] Plus $14.60 bonus in war zone.
[10] Plus $2.90 bonus.

Please observe that the bonuses indicated in footnotes bring British wages of $60 per month to $74.60 per month as compared to $75 on American ships.

We quote the following from Senate Document No. 228, 65th Congress, second session, an article by Andrew Furuseth, that venerable and respected guardian of the seaman referred to herein, at pages 23-24:

> "It has been found that two or more free men will not be kept at the same work for any length of time unless their wages are the same. Experience has further taught that any definite standards of skill tends to

equalize the wages which must be paid. The remedy seemed, therefore, to be to enact laws which would tend to improve the condition of the American seaman and to make such laws, so far as this could be done, applicable to all vessels coming within the jurisdiction of the United States.

Foreign shipowners and their American partners, shipowners or others, who had invested money in foreign vessels fully understood what such legislation would mean to them. They would have to pay the American wage rate. Released economical law would be no respecter of persons, classes, or nations, and so they fought every inch of the way.

They appealed to their own Governments to send protests to the United States, and those Governments protested; they appeared before the Committees of Congress and tried to show that such law would be destructive to American shipping; they warned Congress that foreign shipowners would not send their vessels to American ports; and some American shipowners joined in the warning by saying that they would sell their vessels to foreigners—they would be compelled to do this.

When Congress, nevertheless, passed the bill, they appealed to the President to veto it. When the President signed the bill and thus it became the law, they appealed to the people of the United States, using for this purpose the chambers of commerce, and through the aroused class interests, such part of the daily and monthly press as could be deceived or would take orders. Some shipowners, who for any reason sold any of their vessels, informed the public, through the press, that the 'iniquitous seamen's law' had forced him to sell. They tried to nullify the law through regulations, which the

Department of Commerce had the right to make, and in this they have been so successful that the language clause is nullified and other parts of the act seriously injured. These errors of judgment will have to be rectified, as no doubt they will be, or the act will fail to accomplish the purpose intended by Congress.

As the shipowners have fought for what they conceived to be their class interests before Congress, the President, the public, and in the department, so they are now before the courts. A committee of shipowners in London, such is the information, is to use the best American legal talent obtainable to contest the seamen's act in the courts, presumably on the grounds of the comity of nations, international law, and that Congres exceeded its power in passing this law.

When this legislation is considered in connection with the friendly relations, which ought to govern the conduct of one nation to another, it is not easy to see how the question of comity can at all arise. The United States enacts certain laws dealing with its seamen; the purpose is to induce a better class of men to seek the sea. Better men are needed for the safety of vessels, the safety of life at sea, and for the safety of the Nation. It is part of the settled policy of the United States that there shall be no involuntary servitude, except as a penalty for crime, within its jurisdiction. Americans would not seek the sea while the law governing seamen did not conform to this principle. This Nation, for its own protection, felt impelled to so change the law governing seamen that it would be in harmony with the basic policy of the Nation. In doing this, it did not seek to discriminate in its own favor, it did not discriminate against any nation or between them. There seems to be

no reason for any belief that the United States had any but the best and friendliest motives.

Viewed in the light of the interests of shipowners as such, there is no discrimination. The shipowners of the United States, and of all other nations are, when within the jurisdiction of the United States, placed on a perfect equality. Seamen who are dissatisfied with the wages or treatment which they receive may leave the vessels on which they are serving. That this freedom granted to seamen is by them used to improve their condition is natural and was expected. It is part of the purpose to improve the personnel of the merchant service. It may be that other nations, through the precedent set by the United States, may feel impelled to adopt similar laws to govern their seamen, and shipowners of other nations may, from this point of view, consider this legislation as unfriendly to them; but to this contention, if it shall in fact be made, the answer seems obvious. Any class may and is likely to protest when deprived of any special privilege; but such protests arise out of selfish motives and they are inevitably swept away by the advancing civilization based upon Christianity. The slavery or serfdom which bound the toilers on land has passed from all Christian countries. The corresponding status of the seamen must necessarily follow."

We have before us a copy of the original report of Governor Robert P. Bass of Massachusetts to the United States Shipping Board on "Marine and Dock Labor" dated December 31, 1918. The substance of it as it relates to seamen is admirably stated in an editorial of the *Springfield Republican* dated May 11, 1919, from which we quote the following:

"Wages of British seamen and firemen ranged in 1911 from $20 to $25 a month, while American wages were from $30 to $50. The American rate for both seamen and firemen had by the end of 1918 reached $75. With foreign sailors free to seek employment at these wages foreign ships were faced with the alternative of raising wages or losing their crews.

An examination of the articles of 21 British ships clearing from New York last December showed that seven had hired all or part of their crews in New York and all but one were paying the American rate of $75 a month. The other 14 were paying their British crews a bonus in each case of $15 a month, bringing their actual pay to $72.50 for seamen and $75 for firemen. Each of eight Norwegian ships, four of six Danish ships and three of four Swedish ships paid the American rate in dollars, while the remaining Scandinavian vessels paid bonuses of from 120 to 140 per cent in addition to the low national scale of about $21.

This glimpse of the foreign records indicates a rapid passing of the time when the foreign merchantmen could underbid American vessels as carriers. The tables on wages show not only an actual steady increase in pay of American sailors, but an increase relative to the cost of living. The service has become attractive to a higher quality of labor. Gov. Bass's board also demonstrates that compared with conditions before the war the cost of operation of American ships is less than that of their foreign competitors. The United States clearly has everything to gain and nothing to lose by continuing the law that sets the pace for the merchant navies of the world."

This indicates clearly that the Seamen's Act has had the effect claimed for it, to wit: has equalized substantially American and foreign wages in the trans-Atlantic trade.

Two other circumstances indicate clearly the change of public opinion on the question of serfdom at sea, since the decision of this learned Court in the case of *Robertson* v. *Baldwin*, *supra*.

The Republican Platform in 1912 contained this paragraph:

> "We favor the speedy enactment of laws to provide that seamen shall not be compelled to endure involuntary servitude, and that life and property shall be safeguarded by the ample equipment of vessels with life-saving appliances and with full complements of skilled able-bodied seamen to operate them."

The Democratic Platform in 1912 contained this provision:

> "We urge upon Congress the speedy enactment of laws for the greater security of life and property at sea; and we favor the repeal of all laws and the abrogation of so much of our treaties with other nations as provide for arrest and imprisonment of seamen charged with desertion, or with the violation of their contract of service. Such laws and treaties are un-American and violate the spirit if not the letter of the Constitution of the United States."

The final draft of the League of Nations Treaty contains a provision on labor which deals with this particular act. The same question has again come up before the International Labor Conference at

Washington, and an effort is being made at the present writing to have all governments free their seamen as America freed hers and all others who touch at her ports. Even if other nations do not follow the laudable example of America in freeing the last of bondage workers, the operation of the economic law involved will do it in time.

Our opponents are continuously urging that our law is an unjust interference with their commerce and contrary to principles of international law and rules of comity between nations. Comity is nothing more than courtesy. Congress has stated we are going to do something in America to benefit our seamen and try to get our own people again to follow the sea. We are not going to do this in such a way as to discourage investment of capital in American ships. We are going to make this act applicable to all ships that come into American ports for the purposes of trade. Furthermore, shipowners had due notice of the passage of the act, and one year before its enforcement and after its passage to get ready for it. They came in here deliberately knowing the act was in existence and understanding its terms. If they didn't want to come in, they could have stayed out and nobody would have been offended and no rights infringed, but they chose to come in, and as has been pointed out by the attorney for the Government, came in with the implied promise that they would obey our law.

The Twenty-third Article of the League of Nations Covenant, which has been agreed to by Great Britain, provides under subdivision A:

> "The members of the League will endeavor to secure and maintain fair and humane conditions of labor for men, women and children both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations."

Of course, their standard of what is fair and humane may be different from ours, but let us enforce our standard here, and let the foreign seaman be judge whether it is beneficial to him or not.

And now we are at this point. Let us inquire into what kind of a contract it is the shipowner would ask our courts to enforce. It is a contract made by a man who needs a job; he signs a formal document which binds him to work at a certain rate of wages for a period of twelve to thirty-six calendar months, as the case may be, to go with the vessel to any part of the world as the master may direct, except the Arctic and Antarctic regions, with the express stipulation that he shall have a right to draw no pay, except at the option of the master; that he shall have no right to go ashore except at the option of the master; that he will obey all orders given him during the term of his employment and be entitled to his wages and final discharge only in a port of the United Kingdom. When a man signs that contract he signs away his liberty for as long a period as the master keeps him away from his home port during the life of it. If his vessel chances to go into a port like Buenos Ayres, where the crimps abound, where wages are low, the master may put him on green coffee and indigestible rations, hard work, and abuse him until he is driven ashore,

a deserter from his ship. The avarice of the master is incited by the balance of wages which he leaves behind, lending motive leading to his persecution. The crimps ashore, as pointed out by this Court in the *Neilsen-Rhine* case and in the *Bark Eudora* case, stand ready to fleece him and hand him over to another ship, his wages being signed away in advance. No man or race of men can live under such environment and resist the forces of degradation and degeneration that assail him.

Such a contract, depriving the man of his liberty; making him a bonded slave, robbing him of self-control and opportunity to help himself, is the one which the shipowners in this instance ask our Courts to enforce.

This contract, we say, is contrary not only to the letter of this statute, but utterly contrary to the spirit of democracy and liberty which brought this country into being, and which to date hereof has been the predominating thought of its people. No consideration is deserving to such a contract at the hands of this Court.

On October 21, 1913, in the United States Senate, George Sutherland, now of counsel in the case of *Dillon-Strathearn,* being argued before this Court, read from an article entitled "The Decay of the Steamship in Europe and America" the following:

> "The Caucasian is leaving the sea; the Oriental is filling the vacancy; sea power is in the seamen. Vessels are seamen's working tools. Tools become the property of those who handle them,"

and then said:

> "This is not a prophecy; it is a fact. If the reader needs proofs, let him visit the docks where the ocean cargo carrier—the tramp—is taking in or delivering cargo. He will find that while the officers are white, the sailors and firemen are very largely from the races which inhabit Africa, Asia, and the Malay Islands. If he be fond of statistics and knows the way they are made up, so as to hide from John Bull the loss of his sea legs, the decay of his sea power, let him examine the reports issued from year to year by the board of trade. If he be told that the tendency is sporadic, let him ask the boys along the seacoasts of Europe and America, north of the Mexican line, what they are going to be when they grow up, and the answers will be truly illuminating. Let him ask the seamen if they will accept a job on shore, and he will find that they are willing to accept anything to get away from the sea. The men are leaving the sea; the boys are shunning it.
>
> The compelling cause of this drift from the sea is a great wrong, which can only be cured by legislation. National commissions and international conferences have sat and inquired into losses of life at sea; they have reported vessels to be undermanned both in individual skill and in numbers of seamen employed. Recommendations have been made and forgotten. The *General Slocum* was lost with about 1,000 lives. The coroner's jury said, 'Inefficient crews'; the commission appointed added, 'Not enough life preservers; inefficient inspection.' The net result was more life preservers, better inspection, but no improvement in the crews. The *Titanic* was

lost. The senatorial commission said, 'Not enough lifeboats; the crew inefficient in skill and number.' There are some more lifeboats, but no more or better men. The drift from the sea is growing and safety diminishing, while vessels are steadily growing larger. Seamen have sought proper legislation in vain for more than 20 years. Congress after Congress have been appealed to, but without substantial results. The seamen are poor; they are lowly; few of them are voters; fewer still can vote, being at sea; they have nothing with which to quicken sympathy and induce action except their plainly told tale. And yet the questions arising from the drift from the sea are of great racial importance; they are of great national importance; they are of great economic importance, and of serious personal importance to those who travel the sea for business or pleasure The cause of the drift from the sea is simple; the remedy easy, if honestly applied.

1. When a citizen becomes a seaman he surrenders all rights of citizenship, he voluntarily places himself outside of the protection of the thirteenth amendment to the Constitution."

To correct these evils the Seamen's Act was conceived. It is the plain duty of this Court to give it full force and effect.

POINT IV.

The fact that the contract was made prior to March 4, 1916, when the act went into effect on foreign vessels, does not change the result.

The demand for half wages was made April 6, 1916, after the act was in effect on foreign vessels. *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S., 482. In this case it was held by the Court, Justice Harlan writing the opinion, that a contract made prior to the passage of the statute could not be given effect.

The railroad company made a settlement for a personal injury suit with one Mottley, and part of the consideration of the settlement was that he and his wife should be given a pass which would entitle them to free transportation over the railroad during the rest of their lives. An act of Congress was passed making it unlawful to issue such passes. The Court definitely held that the contract could not be enforced, because it was contrary to the public policy of the United States, irrespective of the good faith of both parties. The Court, at page 485, said:

> "We forbear any further citation of authorities. They are numerous and are all one way. They support the view that, as the contract in question would have been illegal if made after the passage of the commerce act, it cannot now be enforced against the railroad company, even though valid when made. If that principle be not sound, the result would be that individuals and corporations could, by contracts between themselves, in anticipation of legislation,

> render of no avail the exercise by Congress, to the full extent authorized by the Constitution, of the power to regulate commerce. No power of Congress can be thus restricted. The mischief that would result from a different interpretation of the Constitution will be readily perceived."

No further citation under the circumstances seems necessary. The law has been finally settled by this Court in the case of *Louisville & Nashville R. R.* v. *Mottley, supra,* decision rendered February 20, 1911, and has not been overruled or modified.

For these reasons it is respectfully submitted that the decree of the lower Court should be affirmed with costs.

Leave of this Court is requested to file with this brief thirty printed and indexed copies of the Seamen's Act, copies having been served on counsel for claimant-petitioner.

SILAS B. AXTELL,
Proctor for Libelants-Respondents.

W. J. WAGUESPACK,
New Orleans, La.
Of Counsel.

Supreme Court of the United States

J. M. THOMPSON, Master and Claimant of the Steamship "Westmeath," her engines, etc., Claimant-Petitioner, against PETER LUCAS and GUSTAV BLIXT, Libellants-Respondents.	October Term, 1919 No.

Sir:

PLEASE TAKE NOTICE that on Monday, October 6, 1919, at the opening of court on that day, or so soon thereafter as counsel can be heard, we shall make a motion, on the annexed petition, before the Supreme Court of the United States that the above-entitled cause be advanced for hearing on an early day convenient to the Court during the present term, and we shall then and there ask the Court to grant the petitioner such other and further relief in the premises as may be just.

Yours, etc.,

KIRLIN, WOOLSEY & HICKOX,
Proctors for Petitioner.

To

SILAS B. AXTELL, Esq.,
Proctor for Respondents.

SUPREME COURT

OF THE UNITED STATES,

J. M. THOMPSON, Master and Claimant of the Steamship "Westmeath," her engines, etc., Claimant-Petitioner, against PETER LUCAS and GUSTAV BLIXT, Libellants-Respondents.	October Term, 1919 No.

On Writ of Certiorari to the United States Circuit Court of Appeals, for the Second Circuit.

Motion by the petitioner to advance.

Now comes J. M. Thompson, claimant-petitioner of the Steamship "Westmeath," and moves the Court to advance the above entitled cause for hearing on a day convenient to the Court during the present term.

1. The petitioner, J. M. Thompson is the claimant of the Steamship "Westmeath," a British vessel owned by New Zealand Shipping Company, Ltd., of London, England.

The libel is brought by Peter Lucas and Gustav Blixt, foreign subjects, against the Steamship "Westmeath," to recover wages earned up to the time the libellants left the ship and the value of their effects which they left on board that vessel.

It is alleged in the libel that the libellants, firemen on the British Steamship "Westmeath," were hired by the master for and during the voyage from

Australian ports to New York, at a certain rate of wages.

That after the arrival of the Steamship WESTMEATH at the port of New York and on April 8th, the libelant Blixt, and on April 10th the libelant Lucas made a personal demand upon the master of the vessel for one-half of the wages then owing them. The demands were refused by the master and that under and by virtue of Section 4530 of the Revised Statutes of the United States, libelants became and were entitled to their discharge and to the full amount of their wages then due and owing. The libel also demands the value of libelants' clothing and effects.

The answer of the claimant admits that the libelants signed on the articles of the Steamship WESTMEATH but denies the other material allegations of the libel.

As an affirmative defense it is alleged that the Steamship WESTMEATH was a British Steamship and the contract of service entered into between the libelants and the ship was governed by the Laws of Great Britain and Ireland and that by virtue of these laws the libellants were not entitled to bring an action for wages.

It is also alleged in the answer that the contract entered into by the libellants was for a voyage not to exceed one year, beginning on August 4, 1915, and that on April 9, 1916, the libelants deserted the steamship WESTMEATH, and thereby forfeited any claim they had to their wages and effects.

2. The facts are briefly these:

On or about the 19th day of December, 1915, while the Steamship WESTMEATH was at the port of Pirie, Australia, two firemen, one of whom

was Lucas, one of the libelants-respondents herein, were procured as substitutes for two firemen who had deserted. Lucas signed on the articles as soon as he was taken aboard the WESTMEATH after they had been read to him, and his signature was witnessed by the chief engineer.

The libelant-respondent Blixt signed on the articles at Sydney, Australia on December 8th, before a Government Shipping officer, and he admitted he was regularly signed on and that he understood the articles which he signed.

The ship's articles which were signed by both the libelants-respondents, were opened at Liverpool, England, on August 4, 1915. By these articles the men were bound to serve for a voyage not exceeding one year's duration to any ports or places within the limits between 75° North and 60° South, Latitude, commencing at Liverpool, thence to Australia, New Zealand and/or United Kingdom ports, and/or other ports within the above limits in any rotation to end at any such port in the United Kingdom or the Continent of Europe within home trade limits, as might be required by the master.

From New Zealand the WESTMEATH proceeded to America, first going to Boston, then to Baltimore and lastly to New York where she arrived on April 3, 1916.

At all these ports the libelants-respondents repeatedly asked for their discharge, offering to take less than the full amount of their wages in consideration of obtaining their discharge.

On or about April 10, 1916, the respondents left the ship and did not return, although the time for which they had contracted to serve had not expired.

3. A stipulation providing for the proof of Foreign law and its admission in evidence was agreed on between the parties.

The District Court ordered that a decree be entered for the libelants and as to the application of the Seamen's Act, the Judge said in his opinion:

> "It would appear that the provisions of the law apply to the vessel and that the United States Court has the right to enforce the law. The treaty may or may not have been intended to reserve all rights as to British subjects which were the subject of British Statutes. But Congress had now passed a law which gives a United States Statute an effect over British subjects which is not covered by the British law and must have been intended to supersede the rules governing British vessels under former statutes. The law is to aid American seamen. But they would not be aided if discrimination against British subjects in American ports should result in the stranding of American sailors in foreign ports. The effect of the Act of Congress is a matter perhaps for further treaty but the statement of the law is plain."

The Circuit Court of Appeals affirmed the decree of the District Court. The court in its opinion did not make any mention or discuss the petitioner's contention that Section 4530 of the Seamen's Act should not be construed to apply to foreign seamen shipping on foreign vessels at a foreign port under an agreement valid where made and not to be performed within the United States.

The Court in its opinion held that the act as applied to such a case as this is constitutional on the authority of *Patterson* vs. *The Eudora*, 190 U. S., 169, and on the ground that the act is a regulation of commerce.

QUESTIONS OF LAW INVOLVED.

The following questions of law are involved:

1. Whether or not it was the intention of Congress and whether the Seamen's Act shou'd be construed to abrogate the contract of a foreign seaman entered into with a foreign ship outside the jurisdiction of the United States by Section 4530 of the Revised Statutes of the United States, as amended, Act Dec. 21, 1898, C. 28, Sec. 5, and Act March 4, 1915, C. 153, Sec. 4, being part of the so called Seamen's Act.

2. Whether or not Section 4530 of the Revised Statutes is constitutional if so construed as to abrogate a foreign contract entered into with foreign seamen on a foreign vessel outside the jurisdiction of the United States.

REASONS FOR ADVANCING THE CASE.

The reasons for advancing the case are, that as your petitioner is informed and believes:

1. The case involves a question of gravity and importance.

2. The Merchant Marines of foreign governments are seriously affected by the Statute in question

because the validity and effect of their contracts with foreign seamen are in doubt and will be until the questions here raised are decided.

3. It is to put an end to this uncertainty that the petitioner respectfully prays this Honorable Court to advance his case.

4. The libelants are wage earners and this is an action to recover wages and libelants' rights are in doubt pending the decision of this Honorable Court upon the issues raised on this appeal, and the rights of many thousands of other seamen and wage earners are in doubt and will be until the questions here raised are determined by this Honorable Court.

5. The questions involved in this case have been frequently before the Federal and State courts in a number of cases since the passage of the Act in question and the various courts have construed the Act differently in many respects.

6. The case of Strathearn Steamship Company, petitioner, against John Dillon, respondent, which is before this court on a Writ of Certiorari, is very similar to the facts in this case and involves the same questions of law. Your petitioner is informed that a motion is being made before this court in that case to advance it for argument, and it is therefore prayed that this motion to advance this case be granted so that both cases may be heard and disposed of at the same time.

It is submitted therefore that it is appropriate that there should be an early hearing of this case by this Court in order that the determination of

the questions involved in this case may govern the same questions involved in the many other cases pending, that conflicting decisions may be avoided, and that unnecessary expense to parties litigant may be prevented.

Respectfully submitted,

J. M. THOMPSON,
Claimant-Petitioner.

By KIRLIN, WOOLSEY & HICKOX,
Proctors for Claimant-Petitioner.

LA DEGROVE POTTER,
Counsel for Petitioner.

State of New York,
County of New York, } ss.:

L. deGROVE POTTER being duly sworn, says:

I am a member of the firm of Kirlin, Woolsey & Hickox, proctors for the claimant-petitioner herein.

I have read the foregoing petition and the same is true to the best of my knowledge, information and belief.

The reason why this verification is not made by the petitioner is that the petitioner, to the best of my information and belief, is not within the United States.

This verification is made in good faith.

L. deGROVE POTTER.

Sworn to before me this
2nd day of October, 1919.

WM. O. GODDARD,
Notary Public, Kings County.
Certificate filed in New York County.

I do hereby certify that I have examined the foregoing petition and that in my opinion it is entitled to the favorable consideration of this Court.

L. de GROVE POTTER.